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## **Task 11. States' Child Support Guidelines for Children with Disabilities**

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## I. INTRODUCTION

By some estimates, the number of children with disabilities, or special healthcare needs, in the United States has been increasing in recent decades (e.g., Houtrow et al., 2014; Zablotsky et al., 2019). Families raising children with disabilities often face greater economic costs stemming from a variety of factors, including increased out-of-pocket medical costs, specialized equipment, or additional services or items the household may require (Mitra et al., 2017; Stabile & Allin, 2012). Additionally, parental caregiving may be more intensive—requiring more time and effort—for a child with a disability, which can limit parental work and earnings. This may be particularly true in single-parent families, and there is some evidence that children with disabilities may be more likely than other children to live in single-parent and low-income households (Fujiura & Yamaki, 2000; Parish & Cloud, 2006).

Child support is an important regular source of income for many families who receive it. Given the evidence of increased incidence of childhood disability in single-parent and economically vulnerable households, child support may be a crucial financial support for custodial parent households raising a child with a disability. There is very little policy or research literature on the role of child support for children with disabilities or special healthcare needs; there are few estimates of the number of custodial parent families raising a child with a disability, and the research team knows of no studies focused on adequacy of child support order amounts.

An important first step is understanding how child support policy currently accounts for a child's disability or health condition. Beyond requiring medical support, federal child support regulations do not explicitly address how and whether a child's health status should affect a child support order, leaving states discretion in treatment of these cases. States may make a variety of

choices in determining whether and how to account for a child’s disability in state guidelines determining order amounts, either explicitly or implicitly. Some states may also account for a child’s disability by extending payments beyond the age of majority.

This report provides an overview of states’ treatment of child support cases for custodial parent families with a child with a disability. It takes a broad view of the definition of disability to incorporate any special healthcare need a child may have and includes states’ use of the term “special needs” to describe a child’s disability. Within the report, the terms “disability” and “special healthcare need” are used interchangeably. It is important to note that both encompass a number of very different health diagnoses that may impact a child’s or family’s daily life in quite different ways. Some diagnoses may require intensive care while others may require routine care, specific equipment, or medication. Similarly, some conditions may be chronic, while others may manifest themselves differently across a child’s development.<sup>1</sup> After providing some background about this policy issue, this report summarizes states’ decisions in addressing the needs of families with children with disabilities in state-level child support guidelines. State guidelines are first categorized into one of four groups and noted as whether or not they account for a child’s disability in setting child support orders. This is followed by a review of whether states require or allow for the provision of child support past the age of majority in cases with a special needs child. The report concludes with an exploratory analysis of Wisconsin Court Record Data to examine the frequency of cases in Wisconsin in which an order is noted as having deviated from guidelines due to a child’s disability. Understanding different state approaches to setting child support orders and extending the provision of support beyond the age

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<sup>1</sup>For a broader discussion of the definition of children with special healthcare needs, see the data brief “Children with Special Healthcare Needs” (Maternal and Child Health Bureau, 2020).

of majority may be useful as policymakers consider how the child support program can meet the unique needs of this population.

## **II. BACKGROUND AND POLICY CONTEXT**

### **Children with Disabilities**

According to parent-reported data from the National Survey of Children's Health (NSCH), in 2018 roughly 13.6 million children in the United States, or 18% of all children under the age of 18, had a special healthcare need (Maternal and Child Health Bureau (MCHB), 2021). In the 2017–2018 academic year, 6.9 million students received services for a disability at school through the Individuals with Disabilities in Education Act (IDEA), representing roughly 14% of all public-school students (U.S. Department of Education, National Center for Education Statistics, 2019). The proportion of students in Wisconsin receiving IDEA services for a disability is similar: 14% in the current school year (2020–2021), representing approximately 118,000 students (Wisconsin Department of Public Instruction, 2021). Similarly, estimates from the 2018–2019 NSCH suggest that 19% of all children in Wisconsin, or approximately 248,000 children, report having a special healthcare need (MCHB, 2020). Though relying on different definitions of disability, these data indicate that a large number of families nationally and in Wisconsin are caring for a child with a disability or special healthcare need.

Costs associated with parenting a child with a disability are often higher than costs incurred by families with typically-developing children (Lindley & Mark, 2010; Stabile & Allin, 2012). Depending on the nature and severity of a child's health condition, parents of children with disabilities are likely to have additional financial obligations related to a child's healthcare needs, supportive services or educational needs and, sometimes, higher costs for other general services (Mitra et al., 2017; Rogge & Jannssen, 2019). Despite some relief in out-of-pocket

medical costs from the Affordable Care Act and other recent policy changes, uninsured medical costs still remain a concern for some families, particularly for children with complex or advanced medical needs (Allshouse, 2018). According to data from the 2018–2019 NSCH, 23% of children with special healthcare needs reported out-of-pocket annual medical costs of greater than \$1,000, compared to 12% of other children, with five percent of children with special healthcare needs reporting costs in excess of \$5,000 annually. In Wisconsin the same estimates are that nearly one-third of children with disabilities (31%) have out-of-pocket costs above \$1,000 annually, with nearly one-in-ten reporting out-of-pocket medical costs in excess of \$5,000 annually. In addition to direct medical or support costs, costs for general expenses can often be higher for children with disabilities (Mitra et al., 2017). This can include additional fees for childcare or additional costs for transportation or other daily activities, among other expenses (Stabile & Allin, 2011).

Aside from direct costs associated with caring for a child with a disability, there are many indirect costs resulting from a child's increased healthcare and caregiving needs. One recent study estimated that children with special healthcare needs in the United States received the equivalent of 1.5 billion annual hours of family-provided healthcare, which is the equivalent of approximately \$3,200 in foregone annual wages for the average family, per child (Romley et al., 2017). Indeed, a large body of evidence suggests that parents of children with disabilities—particularly mothers—are less likely to work, and more likely to work fewer hours if they are in the labor force, compared to parents of typically-developing children (Brown & Clark, 2017; Costanzo & Magnuson, 2019; Porterfield, 2002).

Moreover, the increased costs related to parenting a child with a disability may persist for a longer time horizon than parenting costs for typically-developing children. During the

childhood years, for example, parents may require child care or wrap-around care for a longer period. A child's disability may also mean that the child may rely on parental support into adulthood, extending a parent's responsibility for economic and caregiving support well beyond the child's eighteenth birthday (Namkung et al., 2018; Pryce et al., 2017; Seltzer et al., 2001).

Increased costs and caregiving responsibilities are often incurred by lower-income, single-parent families. The 2018–2019 NSCH estimates that just under one-quarter of children with special healthcare needs (23%) live in families with a household income under the federal poverty level, compared to 19% of other families (MCHB, 2021). Indeed, though the causal mechanisms are not clear, an extensive body of literature documents the association between children's health conditions and economic well-being; households with children with disabilities are more likely to experience material hardship and other financial instability (e.g., Parish & Cloud, 2006; Reichman, Corman, & Noonan, 2008; Sonik et al., 2016; Stabile & Allin, 2012; Stoddard-Dare et al., 2015). Children with special healthcare needs are also more likely to live in single-parent families than typically-developing children (Reichman, Corman, & Noonan, 2008); just over half of children with special healthcare needs (56%) lived in two-parent, married families in 2018–2019 compared to two-thirds of other children (65%) (MCHB, 2021).

### **Child Support and Children with Disabilities**

Approximately 57,000 children with special healthcare needs in Wisconsin live in a single-parent family (MCHB, 2021). As reviewed above, these parents are likely to face a host of direct and indirect costs related to their child's disability, including barriers to full-time employment as a result of caregiving needs (Earle & Heymann, 2012). Research demonstrates that income from child support can be an important, regular source of income for families, especially low-income families (e.g., Grall, 2020; Ha, Cancian, & Meyer, 2011; Sorenson,

2010). Given the increased likelihood of economic instability as well as the steep caregiving and economic responsibilities, child support may be particularly salient for custodial parents raising children with disabilities. Despite overlaps in both prevalence of childhood disability and single-parent families, as well as the possible role for child support, there has been very little research focused on the intersection of child support and children with disabilities.<sup>2</sup>

There are some data on the prevalence of overlap for a limited population of children with disabilities. The US Social Security Administration (SSA) administers the childhood Supplemental Security Income (SSI) program, which is a means-tested program providing monthly benefit payments to families of children who qualify based on the child's health condition and family's limited income and assets.<sup>3</sup> In 2019, 14.5% of childhood SSI recipients reported support from absent parents, which could be support received either formally via the child support system or informally; such support averaged \$238 per month (SSA, 2020). Beyond this, we have little data to inform our understanding of the prevalence of child support orders or payments to custodial parent families with children with disabilities, nor the amount of child support received. As such, little is known about the impact of child support payments on the

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<sup>2</sup>Policy has been more attentive to parental disability and its impact on child support. Federal regulations and state child support guidelines contain explicit policy regarding how disability benefits, for both the noncustodial and custodial parent, should be treated in determining child support orders. This also can include benefits that children are entitled to, based on their parent's federal Social Security benefits, either for disability or retirement. These benefits are outside the scope of the current report. See, for example, the Flexibility, Efficiency, and Modernization in Child Support Enforcement Program final rule (2016), and Wisconsin Administrative Code DCF 150.03(5).

<sup>3</sup>To qualify for SSI benefits, the child must first meet SSA's disability criteria, meaning the child must have "a medically determinable physical or mental impairment or impairments which result in marked and severe functional limitations" and are expected to last for at least a year or result in death (SSA, 2021). The child must also meet the income and asset eligibility, which vary by household size. In 2021 in a single-parent household with one child, the parent must earn no more than \$3,301 each month. Given the eligibility criteria for SSI receipt, children who receive SSI are likely to differ from the overall population of children with disabilities. For more information about the childhood SSI program, see <https://www.ssa.gov/ssi/text-child-ussi.htm>.

well-being of children with disabilities or the extent to which this support meets the needs of custodial parents and children.

### **Child Support Guidelines**

A crucial step in beginning to understand the role of child support for children with disabilities is reviewing current policy approaches. Federal regulations require states to have presumptive numerical guidelines to determine the amount of child support each noncustodial parent must pay to a custodial parent and children. Overall, guidelines are intended to ensure noncustodial parents support the economic well-being of their children, and, if applied consistently, guidelines can ensure horizontal equity for children and custodial families so that families in similar circumstances are treated similarly by the child support system (Pirog & Ziologuest, 2006; Venohr, 2013). States have flexibility in developing their own guidelines and use a variety of models and underlying economic assumptions to do so.<sup>4</sup> In general, the principle of continuity of expenditures, or the idea that noncustodial parents should contribute what they would in an intact family, is central to many child support guidelines (Venohr, 2013).

The consideration of a child's disability in setting child support orders can be complicated. Guidelines often balance the need for transparency and consistency with the need to be flexible and responsive to special circumstances (Noyes, 2011; Cancian & Costanzo, 2019). In the case of families of children with disabilities, guidelines would ideally account for a child's needs and assure necessary support for the child and custodial parent in a transparent manner yet be flexible enough to account for differences in how a child's disability may impact the custodial parent's economic needs and resources. States could choose to do this in a variety of ways. On

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<sup>4</sup>For a more complete review of child support guideline models see Cancian & Costanzo, 2019, and Venohr, 2013.



one hand, states could choose to explicitly include a particular formula or numeric guideline to account for a child's disability but, given the likely differences in impacts of disparate conditions, this may lead to a decreased sense of fairness. On the other, states could choose to not account for a child's health condition at all. Alternately, classifying a child's disability as a special circumstance and giving the court or other decision-maker discretion over how to account for a child's disability would allow for flexibility but may decrease consistency, transparency, and horizontal equity.

*Wisconsin.* Wisconsin addresses the needs of children with disabilities explicitly in statutes outlining allowable deviations from the percentage-of-income guideline. Specifically, state statutes allow for deviation from the guideline in special circumstances, including “[t]he physical, mental, and emotional health needs of the child, including any costs for health insurance as provided under s.767.513” (Wis. Statutes 767.511(1m)(f)). Statutes also require that if the court employs the use of deviations from the standard, the court must include a written record of the deviation, the amount, and the reason why (Wis. Statutes 767.511 (1n)). Neither statutes nor administrative regulations contain further delineation of when the physical, mental, or emotional health needs of a child may require deviation from a guideline, leaving that to the discretion of the court. Similarly, the court has discretion to determine the new order amount based on the child and custodial parent needs.<sup>5</sup>

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<sup>5</sup>In addition to the monthly support order, noncustodial parents in shared-placement cases may be responsible for “variable costs,” defined as “the reasonable costs above basic support costs incurred by or on behalf of a child, including, but not limited to, the cost of child care, tuition, a child's special needs, and other activities that involve substantial costs” (Wis. Administrative Code DCF 150.02.29). The court may order the variable costs to be paid to the custodial parent or directly to another provider.

## Supporting Children Beyond the Age of Majority

An additional consideration is whether child support should continue past the age of majority for children with disabilities. States generally contain statutes requiring child support through the age of majority, or when the child graduates from high school, whichever comes later.<sup>6</sup> Some states contain provisions for child support to continue past the age of majority in special circumstances, including when the child has a disability (National Conference of State Legislatures (NCSL), 2020), but policy and legal statute on this varies widely across states (Stępień-Sporek & Ryznar, 2011). The legal and policy arguments for continuing support for children with disabilities into adulthood are twofold. First, the custodial parent may continue to financially support the child because the child may be unable to work, and, thus, the noncustodial parent's financial obligation continues as well (Byrns, 2013). Additionally, if parents are no longer providing for their child into adulthood and the child is unable to work due to a disability, they are likely to rely on public benefits. Thus, continuation of child support shifts resources away from public expenditures and back to the child's family (Buhai, 2007).

States take a variety of approaches to the question of when to terminate child support in the case of a child with a disability. Some states explicitly require or allow support to continue for children past the age of majority, others allow support if both parties agree, while others do not address the issue. Of those that do require or allow support into adulthood, there are varied approaches to the definition of disability, length of support required, and whether it can extend for a child whose disability began after the age of majority (Reeves, 2008; Fumagalli, 2017).

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<sup>6</sup>18 is the age of majority for child support in most states, but not all. Some continue support through age 19 or 21 regardless of school enrollment. Some states may also allow for child support to continue for postsecondary education beyond the age of majority. For a comprehensive review, see NCSL, 2020.

*Wisconsin.* Wisconsin statutes and guidelines do not address whether a noncustodial parent has a duty to provide child support beyond the age of the majority. Further, Wisconsin case law has upheld that only state statutes can require parents to support their child past the age of majority, and that courts may not require this (Fumagalli, 2017; *Schmitz v. Schmitz*, 1975; *O’Neill v. O’Neill*, 1962).

### **Current Study**

A review of the literature underscores the potential for child support policy to influence the economic well-being of custodial parent families with children with disabilities. However, this area has been largely unexplored, leaving policymakers with little insight to examine and inform potential policy choices and implications. This report begins to fill this gap by reviewing current state approaches to child support obligations for children with disabilities.

## **III. DATA AND METHODS**

### **Guideline Review**

The research team reviewed available child support guidelines and statutes in all fifty states and the District of Columbia as they relate to treatment of cases involving children with disabilities. Specifically, if the state includes guideline language in statutes or administrative code and also offered a guideline review document, both were reviewed to determine how states account for a child’s disability in setting order amounts. In particular, state guidelines were reviewed for instances in which guidelines: (1) explicitly account for a child’s disability in the formula for setting an order; (2) explicitly account for a child’s disability or medical costs in allowing for a deviation from the guideline; or (3) include general language that may encompass a child’s disability in deviation reasons. The team also reviewed statutes related to medical or variable expenses, though did not consider medical support provisions specifically.

In addition, state statutes and guidelines were also assessed related to the provision of support beyond the age of majority due to a child's disability. In some cases, the portion of the state code related to child support did not address support beyond the age of majority, but the state's general statutes related to the provision of support for children or definition of minor may have been applicable. When possible, this is noted in Table 2.

### **Court Record Data**

The review of guidelines was supplemented by an examination of court data in Wisconsin which aimed to better understand the frequency of cases in which courts deviate from the guideline standards as a result of a child's disability.<sup>7</sup> The Court Record Data (CRD) are drawn from court records in 21 counties in Wisconsin and provide information on child support orders, including deviations from the guideline amount. Data from eight CRD cohorts were pooled—combining cases filed with the courts from July 2005 to August 2010 and in calendar year 2013—for a total sample of 10,590 cases.

When courts deviate from the percentage-of-income guideline, they are required to make a written record of the reason for the deviation. CRD data collectors then code the reasons for the deviation in our data. There are a large number of deviation codes used by the data collectors and include factors related to parents' income, employment, children's placement circumstances, or household expenses. Though there are deviation codes in the CRD for the mother's and father's hospitalization and/or disability, there are no deviation codes that broadly cover a child's physical or mental health needs. Our analysis focuses on cases that have a deviation coded in the record for two reasons. The first is a child's receipt of SSI for his or her own disability; this is the

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<sup>7</sup>In Wisconsin, courts may not order child support beyond the age of majority; thus, our exploratory analysis is limited to the frequency of deviations due to a child's disability.

only deviation measure that explicitly points to the role of a child's disability. Because receipt of SSI is contingent on the child's condition meeting a strict definition of disability as well as a family's limited income and assets, conditioning on this deviation reason alone could undercount the number of cases in which the court deviates from guidelines due to a child's disability. To account for this, the analysis also examined cases with deviations for reason of a child's uninsured health expenses.<sup>8</sup>

Data collectors may identify up to six possible reasons for explicit deviations and six possible reasons for implicit deviations. Deviation reasons may be coded as implicit when the data collector has inferred the reason for the deviation from a variety of facts in the case, even if the deviation and rationale were not explicitly mentioned. We examined all reasons for explicit or implicit deviations to determine if a child's receipt of SSI or uninsured medical expenses may have led to a deviation. In some child support cases, a deviation reason may not be read into the record, even if it is stated in the courtroom. Thus, our analysis may also be an underestimate due to missing data in these cases and their subsequent exclusion from the analysis.

This analysis is descriptive and exploratory in nature, in part due to the very low number of cases available in the CRD indicating the use of deviations for either reason. We examined the proportions of cases with either deviation by a variety of case characteristics, including case type (divorce or paternity), IV-D status (whether the family is receiving services through the state child support program), and the number of children associated with each case.

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<sup>8</sup> We considered including cases with deviations due to medical insurance premiums and child care expenses, but ultimately decided that these codes were too broad to provide meaningful information about the cases of interest.

## IV. FINDINGS AND DISCUSSION

### State Guidelines

Table 1 summarizes the categories we used to classify states' approaches to setting child support orders for children with disabilities, and the number of states identified as following each approach. To highlight differences in states' treatment of these cases, we classified we classify state approaches into four different categories: (1) States that explicitly include a reference to a child's disability, physical or mental health, "special needs" or other specific language referring to a child's health or disability when outlining allowable deviations from the guideline amount; (2) States that explicitly include a reference to a child's physical or emotional condition in outlining factors to be considered in setting order amounts; (3) States that implicitly account for disability as an allowable deviation through a reference to "extraordinary medical expenses" or similar language; and (4) States that do not include direct reference to a child's health, disability, or medical needs or expenses in state guidelines, administrative code, or statutes. In the latter group of cases, a child's disability may be included in a broad, umbrella definition such as "extraordinary expenses." In drawing a distinction between states with direct acknowledgement of a child's health or healthcare costs in setting orders and states that may account for disability only through very broad language, the intent is to underscore the extent to which states can and do specifically attend to the needs of children with disabilities or healthcare needs or expenses in setting child support orders.

**Table 1: Number of States Explicitly or Implicitly Accounting for a Child’s Disability in Setting Child Support Order Amounts**

Category	Number of States
Explicit—Deviation	24
Explicit—Consideration of Order Amount	5
Implicit—Extraordinary Medical Costs	11
Disability, Health, or Medical Needs or Costs Not Specifically Addressed	11

Most commonly, states include language either explicitly or implicitly accounting for a child’s disability as a permissible reason to deviate from the guidelines; this includes 24 states that specifically mention a child’s disability or special needs and 10 states that allow for deviations for medical costs. Five states include language about a child’s physical or emotional needs when outlining factors to be considered in setting support orders. Finally, based on this review, eleven states do not seem to specifically address a child’s disability or healthcare needs, either explicitly or implicitly, in setting child support orders. Instead, these states may allow for deviation due to a child’s disability using very broad language. For example, Indiana guidelines recognize an “infinite number” of reasons for deviation (Indiana Rules of Court, 2020). This may make it less likely that the court or families specifically attend to a child’s disability in setting a child support order.

**Table 2: States’ Treatment of Child’s Disability in Setting Child Support Order Amounts**

Category	State	Details
Explicit—Deviation	Arizona	Deviations allowed for extraordinary children (“gifted or handicapped”)
	California	Deviations allowed in cases where a child has special medical or other needs that would require additional support
	Connecticut	Deviations allowed due to expenses for special needs or other reimbursable medical expenses
	Florida	Deviations allowed for “special needs such as costs that may be associated with the disability of a child that have traditionally been met within the family budget even though fulfilling those needs will cause support to exceed the presumptive amount”

Category	State	Details
	Hawaii	Deviations allowed for special needs of a “physically or emotionally disabled child”
	Illinois	Deviations allowed for “the physical and emotional condition of the child and his or her educational needs”
	Kansas	Deviations allowed for child’s special needs. Worksheet to determine child support amount explicitly includes child’s special needs
	Kentucky	Deviations allowed for extraordinary medical or dental needs
	Maine	Deviations allowed, if “the future incidence is determinable because of the permanent, chronic, or recurring nature of the illness or disorder, the sums actually being expended for medical expenses must be added to the basic support entitlement”
	Massachusetts	Deviations allowed if “child has ongoing special needs”
	Michigan	Deviations allowed for child’s special needs
	Minnesota	Can exceed guidelines if court finds that “a child has a disability or other substantial, demonstrated need for the additional support [ . . . ] and that the additional support will directly benefit the child.”
	Nebraska	Can exceed guidelines for special needs of a disabled child
	New Hampshire	Deviations allowed for ongoing extraordinary health expenses, including expenses related to special needs of a child
	New Jersey	Deviations allowed for special needs of gifted or disabled child
	North Dakota	Deviations allowed for increased needs of children with disabling conditions or other chronic illness (Administrative Code)
	Ohio	Deviations allowed for “special and unusual needs of the child or children, including needs arising from the physical or psychological condition of the child or children”
	Oklahoma	Deviations allowed for extraordinary educational expenses, including “other reasonable and necessary expenses associated with special needs education for a child with a disability under the IDEA”
	South Dakota	Deviations allowed for health care special needs of child
	Virginia	Deviations allowed for any special needs of the child resulting from physical, emotional, or medical condition
	Washington	Deviations allowed for special needs of disabled child
	West Virginia	Deviations allowed special needs of the child who is physically or mentally disabled
	Wisconsin	Deviations allowed for physical, mental, or emotional health needs of child
	Wyoming	Deviations allowed for special health care needs of child
Explicit—Factors in Setting Order Amount	Idaho	State statutes include “physical and emotional condition of the child” as relevant factor in considering child support
	Missouri	Court should consider “the physical and emotional condition of the child” in setting the order amount



Category	State	Details
	New York	Orders should account for physical needs or emotional needs of the child
	Rhode Island	Orders should account for “physical and emotional condition of the child”
	Vermont	Extraordinary expenses for special needs child considered in order amount
Implicit—Medical or Special Ed Expenses	Alabama	Court may include additional amount due to “extraordinary medical, dental, and educational expenses”
	Alaska	Deviation allowed for “unusual circumstances.” Commentary mentions health or other extraordinary expenses specifically as an example.
	Arkansas	Deviation allowed for special education needs of a child, and court may also deviate for extraordinary medical expenses
	Colorado	Deviations allowed for extraordinary medical expenses
	Louisiana	Deviations allowed for extraordinary medical expenses
	Maryland	Deviations allowed for extraordinary medical expenses
	Mississippi	Deviation allowed for extraordinary medical, psychological, educational, or dental expenses
	Montana	Deviation allowed for needs of the child, including medical needs
	New Mexico	Deviations allowed for extraordinary medical expenses
	South Carolina	Deviations allowed for extraordinary medical expenses
	Tennessee	Deviations allowed for extra expenses, including special needs education
Not Addressed Specifically	Delaware	Deviations allowed for “special financial needs”
	District of Columbia	Deviations allowed if needs of the child are “exceptional”
	Georgia	Special expenses should be accounted for. No mention of special needs or health.
	Indiana	State statute recognizes an “infinite number” of reasons for deviation, but does not mention disability or healthcare explicitly
	Iowa	Deviations allowed when necessary, to provide for a child
	Nevada	Deviations allowed for special education needs
	North Carolina	Deviations allowed for extraordinary expenses
	Oregon	Deviations allowed for either “extraordinary or diminished needs of the child”
	Pennsylvania	Deviations allowed for “unusual needs”
	Texas	Order amount can include amount of “special or extraordinary” expenses
	Utah	No explicit or implicit mention of child’s disability or healthcare needs found in review

Additional policy information from state statutes is included in Table 2. Notably, no states include a specific formula for calculating support amounts based on a child's disability, and very few provide a clear definition of disability or special needs. On one hand, this increases the courts' flexibility to determine how and whether a child's disability may influence support needs, which may be desirable given the range of severity of disability and the heterogenous needs of children with disabilities. On the other hand, this discretion may lead to inconsistent outcomes across similar cases, and, depending on the information available to the court, may also result in order amounts that do not meet the needs of custodial parent families with a child with a disability. It is not clear how courts determine if additional support is warranted, and, further, how to account for that additional support in the order. When states account for a child's "extraordinary expenses" through the addition of costs to the order, often parents must provide some indication of the amount and need for these costs. For example, though it is one of few states to do so, Kansas includes this information in its child support worksheet for parents (Kansas Courts, 2021). It is possible that this approach may provide additional transparency in determining the order amount.

Additionally, though guidelines may refer to a child's health needs as a reason for deviation, the extent to which courts or custodial parents raise this issue in setting order amounts is also unclear. Without an explicit prompt, it is possible a custodial parent would not be aware that caregiving responsibilities for a child with a disability may be grounds for deviation from the guideline amount.

Overall, the current review suggests that states have taken a variety of policy approaches to addressing support needs for children with disabilities. Because of the discretion inherent in all these approaches, it is not clear from this review how various policies are implemented in

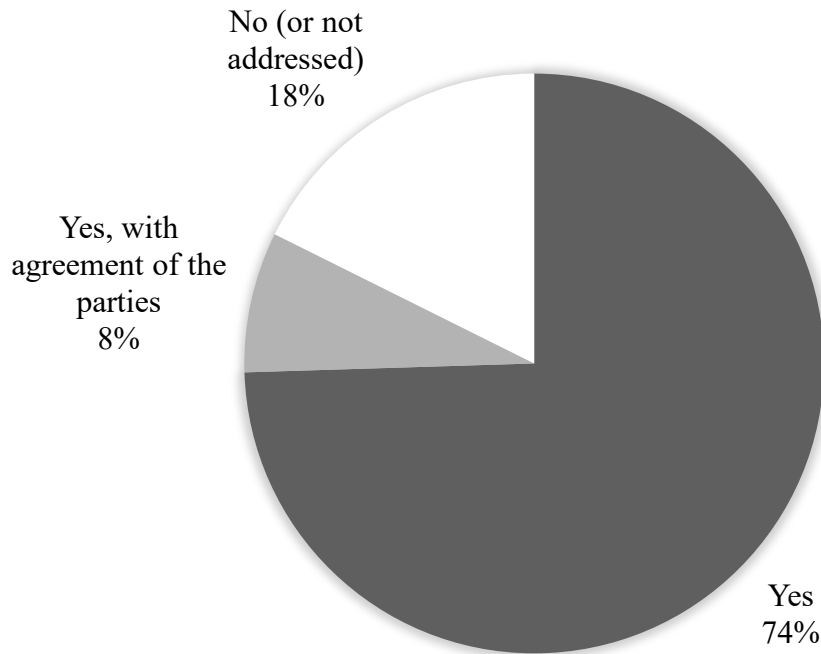
practice. Similarly, it is unclear how often orders deviate from guidelines due to a child's disability, nor whether various state approaches have resulted in different outcomes in setting child support orders.

### **Child Support Beyond the Age of Majority**

States' approaches for whether or not to terminate cases beyond the age of majority also vary. As indicated in Figure 1, the majority of states and the District of Columbia allow or require the continuation of child support past the age of majority due to a child's disability (42 out of 51). Some states have not addressed this directly in their child support statutes or guidelines; in these cases, following Fumagalli (2017), this study relied on the state's general statutes and case law on the age of majority and parent's support requirements for children.

Wisconsin is in the minority of states not allowing for support to continue once a child passes the age of majority.

**Figure 1: Proportion of States Allowing or Requiring Support Past the Age of Majority Due to a Child's Disability**



As seen in Table 3, this study further explores differences in states' approaches to continuing child support past the age of majority. Most states include an explicit reference to support continuing beyond the age of majority in their child support statutes, including a subset of states where the child support statutes allow for support to continue contingent upon the agreement of the parties. Some states rely on a general statute or case law as precedence for allowing support for an adult child with a disability. A minority of states do not have clear statutes or case law requiring child support beyond the age of majority in the case of a child's disability. Some states in this category, including Wisconsin, follow case law that support may not be ordered to continue in the absence of state statutes specifically permitting or requiring extended support.

Within states that do require or allow extended support, many use broad language to define a child’s disability, or rely on a definition based on the child’s (in)ability to support themselves. Some, however, like New Jersey and Tennessee, use definitions of disability or eligibility criteria from federal programs or policies. Other differences in approaches within states that allow or require child support beyond the age of majority include: (1) whether support may continue if disability onset was after the age of the majority; and (2) the duration for which support may continue; some states allow support for a limited period of time while in others support may continue for the duration of the child’s disability or need for parental support. Very few states address how courts should determine order amounts once a child is beyond the age of majority. Overall, though most states allow for support beyond the age of majority, approaches to such support are less consistent.

**Table 3: States’ Treatment of Child Support Past the Age of Majority for Children with Disabilities**

<b>Approach</b>	<b>State</b>	<b>Additional Details (If Applicable)</b>
Child Support Required/Allowed; Explicitly Included in Child Support Statutes	Arizona	Disability onset must be before age of majority
	Arkansas	
	California	Parents are responsible for supporting a child who is “incapacitated from earning a living”
	Colorado	
	Connecticut	Support required up to age 21 if the child is intellectually disabled or has a mental or physical disability defined in statute and lives with the custodial parent. Child support guideline amount does not apply
	Florida	Disability onset must be before age 18
	Hawaii	Court or CSA may order extended child support; can be ordered after child is older than 18
	Illinois	Disability onset must be before age 18
	Indiana	Support may continue for duration of the period the adult child is “incapacitated”
	Iowa	
	Kentucky	
	Louisiana	Disability onset must be before age of majority
	Maryland	Parents have obligation to support a “destitute” adult child

<b>Approach</b>	<b>State</b>	<b>Additional Details (If Applicable)</b>
	Massachusetts	Extended support allowed up to age 23 (for any child enrolled in school)
	Minnesota	
	Mississippi	Extension beyond the age of majority must be included in the initial agreement for support to continue
	Missouri	
	Montana	Order in effect until court determines the individual is no longer financially dependent on the custodial parent
	Nevada	Defines disability using similar language to Social Security Administration; must have become disabled before age of majority
	New Hampshire	Support can continue up to age 21
	New Jersey	Child must have a disability as determined by a federal agency prior to their 19th birthday, parent must submit request in writing
	Ohio	
	Oklahoma	Disability onset must be before age of majority
	Pennsylvania	
	Rhode Island	Disability onset must be before age of majority; Requires that the court take into consideration several relevant factors including parent's caregiving time
	South Carolina	Support may continue for duration of child's disability
	Tennessee	Order can continue for children who are disabled under the Americans with Disabilities Act up to age 21; "severely" disabled children can receive support past age 21
	Texas	Support may continue for duration of child's disability
	Utah	
	Virginia	
	Washington	
	West Virginia	
	Wyoming	
Child Support Required/Allowed; Based on General Statutes/Case Law	Alabama	Case Law. Included in case law; not found in child support statutes
	Alaska	General Statutes/Case Law. General statutes require support of parent to maintain child; case law permits child support beyond age of majority in case of a child's disability (Buhai, 2007)
	Delaware	General Statutes. Parents have duty to maintain "poor" children, including those who cannot support themselves
	District of Columbia	Case Law
	Oregon	General Statutes. Parents have duty to maintain "poor" children, including those who cannot support themselves
Child Support Allowed If Agreed Upon By All Parties	Kansas	Families must have a written agreement to extend child support
	Michigan	Possible to extend support by agreement of the parties
	North Dakota	
	South Dakota	Must be agreed to by both parties

<b>Approach</b>	<b>State</b>	<b>Additional Details (If Applicable)</b>
Child Support Not Required	Georgia	
	Idaho	
	Maine	
	Nebraska	
	New Mexico	
	New York	
	North Carolina	Rights for adults who are “incapable of self-support” are the same as a minor “for purposes of custody” but no explicit inclusion of child support order
Vermont	Some sources suggest this is allowable if agreed to by both parties based on case law (See: NSCL, 2020; Buhai, 2007)	
Wisconsin		

### **Wisconsin Court Records**

To further shed light on how often child support orders deviate from guidelines for a child’s disability in practice, we conducted an exploratory analysis of Wisconsin court records. Descriptive findings from Wisconsin child support cases are presented in Table 4. Reported here are weighted proportions of cases that included a deviation in the court record due to SSI receipt for a child’s own’ disability and those with a deviation due to uninsured medical expenses. Overall, very few cases were identified with a deviation from the guidelines written into court record for a reason potentially related to a child’s disability. Fewer than one percent of all cases noted a deviation due to SSI receipt for a child’s own disability. Though it was more common for cases to have a deviation written into the court record due to uninsured medical expenses, these cases were still uncommon, representing approximately 3% of the cases in this sample. Cumulatively, fewer than 4% of cases in this sample included a deviation in the written record that could be identified as potentially relating to a child’s disability.

**Table 4: Prevalence of Deviations Related to Child Disability in Wisconsin Court Records**

	N	Child's SSI Receipt	Uninsured Medical Costs
<b>All</b>	10,590	0.5%	3.0%
<b>Case Type</b>			
Divorce	4,810	0.7%	3.0%
Paternity	5,780	0.4%	3.1%
<b>IV-D Case</b>	5,128	0.5%	2.0%
<b>Decision Type</b>			
Decided solely by stipulation	4,482	0.6%	3.0%
Decided by family court commissioner	5,659	0.4%	3.1%
<b>Number of Shared Children</b>			
One Child	6,341	0.4%	2.9%
Multiple Children	4,249	0.7%	3.3%
<b>Placement Type</b>			
Mother Sole Custody	6,407	0.6%	3.0%
Shared Custody	2,979	0.3%	3.5%
<b>County</b>			
Milwaukee	2,391	0.7%	2.7%
Other Counties	8,199	0.4%	3.3%

**Note:** Percentages are weighted.

We examined whether deviation due to a child's disability may be more common for some types of cases. Generally, we find similarly low proportions across all types of case characteristics. Deviations due to a child's receipt of SSI was slightly more common in divorce compared to paternity cases (0.7% compared to 0.4%) and in Milwaukee County compared to other counties (0.7% compared to 0.4%). There were also small differences in the number of children included in a case, with both types of deviation occurring in a minimally higher proportion of cases with more than one child. Deviations for uninsured medical expenses were slightly more common in shared placement cases compared to mother sole custody cases (3.5% compared to 3.0%), and slightly less common in Milwaukee compared to other counties. In addition to prevalence of deviations, our intent was also to examine the direction and magnitude



of the deviations for reasons related to a child's disability. However, due to data limitations, we were not able to analyze the direction and magnitude of deviations in a meaningful way.<sup>9</sup>

Cases were selected based on available deviation codes in the CRD, and it is possible these codes may not encompass all cases in which orders deviated from guidelines due to a child's disability, resulting in an undercounting of the true number of cases. Still, even taking into account a potential undercount, the proportion of cases is considerably lower than we might expect given population estimates of childhood disability prevalence. Recent data from the NSCH suggest that 15% of children in Wisconsin have a health condition requiring specialized services or therapies, and 14% of children have a health condition that greatly impacts their daily activities (MCHB, 2021). This is considerably higher than the proportion of cases identified in the CRD. Moreover, as noted, SSI cases represent a small subsection of the overall cases in which a child has a disability given strict eligibility criteria for both child's health condition and family's financial resources. Still, estimates from the past decade suggest that approximately 1.5–2% of all children in Wisconsin receive SSI benefits (Wittenburg et al., 2015); we find a markedly lower proportion of cases in the CRD with child's own SSI receipt noted in the case record as a reason for deviation. Taken together, these estimates compared with population-level prevalence of child disability suggest that the incidence of deviation from the guidelines due to a child's disability is rare in Wisconsin.

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<sup>9</sup>The small number of cases with relevant deviations overall made an informative analysis difficult. This was further complicated by missing data on several relevant characteristics for calculating deviations. For example, approximately one-third of the already-small sample were missing income data for one or both parents.

## V. CONCLUSIONS

It is likely that a nontrivial number of custodial parents have caregiving responsibilities for a child with a disability, and, following national trends, it is likely this number has been growing (e.g., Zablotsky et al., 2019). Custodial parents raising a child with a disability or special healthcare need are likely to face additional economic and caregiving responsibilities than other custodial parents, which may lead to greater economic insecurity for these families, placing greater importance on the role of child support receipt. There is currently very little evidence about the role of child support in the lives of custodial parent families raising children with disabilities. Although there is much to learn, this report offers a crucial first step in reviewing the range of policy options currently in use across all states and the District of Columbia.

This review suggests that states generally account for a child's disability, either explicitly or implicitly, through allowable deviations from child support guidelines. This approach maintains flexibility for states and courts to set orders based on a family's specific circumstances; given the differences in health conditions and resulting impact on a child's family, such flexibility is important. However, because this leaves open the decision of whether and how to account for a child's disability in setting order amounts, it may also reduce transparency and consistency in deviating from guideline amounts. Perhaps more importantly, because it is not often explicitly accounted for, courts and families may not consistently review the need for differences in support amounts due to a child's disability. There are likely small steps that could be taken to prompt courts and decision-makers to account for expenses related to a child's disability. For example, the inclusion of a line to account for a child's disability on the Kansas child support worksheet offers one relatively straightforward policy approach. Most states also allow for child support to continue past the age of majority for children with

disabilities. Most commonly, this is explicitly included in a child support statute, though in some cases, it is allowed only if both parties agree.

This analysis is limited to a review of publicly available state child support statutes and guidelines and does not provide insight into what is happening in practice in setting child support orders nationwide. Knowing how orders are actually set to account for child's healthcare needs and disabilities would shed light on the extent to which the current approaches are equitably and consistently addressing the needs of children with disabilities and their custodial parent families. An exploratory analysis using the Wisconsin Court Record Data suggest that in Wisconsin, at least, a known deviation for a child's disability is relatively rare.

There are a number of avenues for future research which could build on the summary of approaches outlined here. First, understanding how and whether courts consider a child's disability in setting order amounts could be greatly enhanced by conducting interviews with family court commissioners and child support staff. Second, gaining a better understanding of the incidence of childhood disability among custodial parent families and the frequency with which child support orders are modified or continued beyond the age of majority across states and approaches would be illuminating. Finally, though limited by available data, future research could attend to outcomes for children with disabilities who receive child support.

This report provides a general summary of approaches states currently take in setting child support orders for children with disabilities. There are many additional relevant policy questions, including how orders are implemented in practice and whether current child support policy is adequately meeting the needs of children with disabilities and custodial parents. This study offers a crucial first step by providing policymakers an overview of current state child support guidelines as they relate to children with disabilities and their families.

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**APPENDIX A: STATE STATUTE AND OTHER APPLICABLE REFERENCES**

<b>State</b>	<b>Guidelines Statute/Reference</b>	<b>Age of Majority Statute/Reference</b>
Alabama	Alabama Rules of Judicial Administration, Rule 32-C-4 Child Support Guidelines	Case Law <i>Ex parte Brewington</i> (See: Fumagalli, 2017)
Alaska	Alaska Rule 90.3.(c)(1); Commentary, VI.B	Alaska Stat. § 25.20.030
Arizona	Ariz. Rev. Statutes § 25-320 D.4	Ariz. Rev. Statutes § 25-320 ( E )
Arkansas	Arkansas Judiciary Administrative Orders Order 10. Child Support Guidelines 2020 (2) (a)	Ark. Code § 9-12-312 (a) (6) (b)
California	Cal. Fam. Code § 4057 (b) (5) (c)	Cal. Fam. Code § 3910
Colorado	Colo. Rev. Stat. § 14-10-1145	Colo. Rev. Stat. § 14-10-115 13(a)(II)
Connecticut	Conn. Gen. Stat. §46b-215a-5c. (b) (2) (c)	Conn. Gen. Stat. § 46b-84(c)
Delaware	Delaware Family Court Rules of Civil Procedure Section XVII Rule 503.	Del. Code tit 13 § 503
District of Columbia	Code of the District of Columbia § 16-916.01(j)(1)	Nelson v Nelson, 548 A.2d 109, 111 (D.C. 1988)
Florida	Fla. Stat. § 61.30 (11)(a)(6)	Fla. Stat § 743.07
Georgia	OCGA § 19-6-15 (i)(2)(J)	OCGA § 19-6-15 ( e )
Hawaii	Haw. Rev Stat § 576D-7 (2013)	Haw. Rev. Stat. § 580-47
Idaho	Idaho Code § 32-706	Idaho Code § 32-706
Illinois	750 Ill. Comp. Stat. § 505 (a) (2) (D)	750 Ill. Comp. Stat. § 502
Indiana	Indiana Rules of the Court Child Support Rules and Guidelines Section 2	Ind. Code § 31-16-6-6
Iowa	Iowa Court Rules Rule 9.11	Iowa Code § 252A.3(3)
Kansas	Kansas Courts	Kansas Stat. Ann. § 23-3001
Kentucky	Ky. Rev. Stat. § 403.211 (3)	Ky. Rev. Stat. § 405.020 (2)
Louisiana	Louisiana Revised Statutes § 9:315.1 ( C ) (4)	Louisiana Revised Statutes § 9:315.22
Maine	Maine Revised Statutes § 19-A 3 63 Section 2006 (3) (B)	NA
Maryland	Maryland Code, Family Law § 12-204 (h) (2) (2019)	Maryland Code, Family Law § 13-301 (2019).
Massachusetts	Massachusetts Child Support Guidelines Section IV.B.2	Mass. Gen. Laws 208 28.
Michigan	2017 Michigan Child Support Formula Manual Section 1.04(E)	Mich. Comp. Laws §722.52
Minnesota	Minn. Stat. § 518A.35.3.b and 518A.43.1.2	Minn. Stat. § 518A.26 (5)
Mississippi	Miss. Code Ann. § 43-19-103	Miss. Code Ann. §93-11-65(8)(a);
Missouri	Missouri Revised Statutes § 452.340	Missouri Revised Statutes § 452.340. 4
Montana	Mont. Code Ann. § 40-6-116	Mont. Code Ann. § 40-4-208 (6) (2019)
Nebraska	Nebraska Supreme Court Rules 4-203	NA
Nevada	Nev. Administrative Code 425.150 (2020).	Nev. Rev. St. § 125B.110

<b>State</b>	<b>Guidelines Statute/Reference</b>	<b>Age of Majority Statute/Reference</b>
New Hampshire	N.H. Rev. Stat. § 458-c:5	N.H. Rev. Stat. § 461-A:14 (IV)
New Jersey	New Jersey Rules of Court Appendix IX-A Section 9.d	N.J. Stat. Ann. § 2A:17-56.67
New Mexico	N.M. Stat. § 40-4-11.1 (I)	NA
New York	New York Consolidated Laws Family Court Act § 413 (1) f	New York Consolidated Laws Family Court Act § 413 (1) a
North Carolina	N.C. Gen. Stat. § 50-13.4 ( c )	N.C. Gen. Stat. 50-13.4 ( c ) / N.C. Gen. Stat. § 50-13.8
North Dakota	North Dakota Administrative Code 75-02-04.1-09	N.D. Cent. Code § 14-09-08.2
Ohio	Ohio Rev. Code § 3119.23	Ohio Rev. Code § 3119.86
Oklahoma	Okla. Stat. tit. 43 § 118H (2019)	Okla. Stat. tit. 43, § 112.1A
Oregon	Oregon AR 137-050-0760	Or. Rev. Stat. § 109.010
Pennsylvania	23 Pa. Cons. Stat. Ann. § 4322(a),	231 Pa. Code Rule 1910.19; Pa. Cons. Stat. Tit. 23, § 4321(3)
Rhode Island	15 R.I. Gen. Laws § 15-5-16.2 (a) (4)	15 R.I. Gen. Laws § 15-5-16.2 (b)
South Carolina	South Carolina Child Support Guidelines 2014 edition. <a href="https://dss.sc.gov/media/1585/2014-child-support-guidelines-booklet.pdf">https://dss.sc.gov/media/1585/2014-child-support-guidelines-booklet.pdf</a>	S.C. Code § 63-3-530(17)
South Dakota	S.D. Codified Laws § 25-7-6.10	S.D. Codified Laws § 25-7-9
Tennessee	Rules of Tennessee Department of Human Services 1240-02-04-03 (4) (b) (6) (i)	Tenn. Code Ann. § 36-5-101(k)
Texas	Tex. Fam. Code Ann. § 154.123	Tex. Fam. Code Ann. § 154.001
Utah	NA	Utah Code Ann. § 78B-12-102 / § 78B-12-202
Vermont	15 Vt. Stat. Ann. Tit. 15 § 659	NA
Virginia	Va. Code Ann. § 20-108,1 B.8	Va. Code Ann. § 20-60.3 (5)
Washington	Wash. Rev. Code. § 26.19.075 (1) (c) (3)	Wash. Rev. Code § 26.19.035 (1) (f)
West Virginia	W. Va. Code § 48-13-702	W. Va. Code § 48-11-103
Wisconsin	Wis. Stat. § 767.511	NA
Wyoming	Wyo. Stat. Ann. § 20-2-307 (b) (iii)	Wyo. Stat. § 14-2-204(a)(i)